



POLICE DEPARTMENT

April 5, 2018

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In the Matter of Charges and Specifications : Case No.
- against - : 2016-15000
Sergeant James Slavin :
Tax Registry No. 933362 :
17 Precinct :
-----X-----

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable David S. Weisel
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB: Raasheja N. Page, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent: Stuart London, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

Charges and Specifications:

1. Sergeant James Slavin, on or about August 17, 2015, at approximately 2035 hours, while assigned to 17th Precinct and on duty, in the vicinity of the front of 230 East 50th Street, New York County, wrongfully used force, in that he placed his left arm across B's neck area, thereby causing him to be held in a chokehold.

P.G. 203-11

USE OF FORCE

2. Sergeant James Slavin, on or about August 17, 2015, at approximately 2035 hours, while assigned to 17th Precinct and on duty, in the vicinity of the front of 230 East 50th Street, New York County, restricted the breathing of B.

P.G. 212-49, Page 2

ADDITIONAL DATA

3. Sergeant James Slavin, on or about August 17, 2015, at approximately 2035 hours, while assigned to 17th Precinct and on duty, in the vicinity of the front [of] 230 East 50th Street, New York County, wrongfully used force, in that he used physical force against A in that he grabbed her and pushed her against a parked vehicle.

P.G. 203-11

USE OF FORCE

4. Sergeant James Slavin, on or about August 17, 2015, at approximately 2035 hours, while assigned to 17th Precinct and on duty, in the vicinity of the front of 230 East 50th Street, New York County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he issued a summons to B for Disorderly Conduct (P.L. Section 240.20 (5) Obstruction of Vehicular Traffic) without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT – PROHIBITED CONDUCT

5. Said Sergeant James Slavin, on or about August 17, 2015, at approximately 2035, while assigned to 17th PCT and on duty, in the vicinity of in front of 230 East 50th Street, New York County, wrongfully used force, in that he forcefully took B to the ground without police necessity.

P.G. 203-11

USE OF FORCE

SUMMARY OF FINDINGS

The above-named member of the Department appeared before the Court on January 10, 2018. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The

CCRB presented the interview transcripts of A and B as evidence.

Respondent called Police Officer Brian Devita as a witness and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

After reviewing the evidence presented at the hearing and assessing the credibility of the witnesses, the Court finds Respondent Guilty of Specification Nos. 1 and 2, and Not Guilty of Specification Nos. 3-5.

Facts and Analysis

It is undisputed that on Monday, August 17, 2015, there was a protest by about 25 people through the streets of East Midtown within the confines of the 17 Precinct. The protest was of a nearby pizza shop that allegedly had marketed a product with a racist name, but the group conducting the protest also generally protested alleged police misconduct.

It is further undisputed that as the group marched downtown on Third Avenue, against traffic and in the street, several 911 calls were made by motorists and bystanders, stating that a large group was disrupting traffic and kicking over garbage. It is undisputed that Respondent was informed of this condition and left on foot from the stationhouse, on 51st Street between Lexington and Third Avenues.

It is further undisputed that the group turned east on 50th Street and Respondent caught up with them there, between Third and Second Avenues. Respondent began approaching several marchers, all of whom were in the street. One of these was A. It is undisputed that A refused to leave the street when instructed to do so by Respondent. It is undisputed that Respondent grabbed A and pushed her against a parked vehicle in the course of attempting to handcuff her. It is alleged by the CCRB that this was a wrongful use of force. Respondent contends that the force was appropriate.

After A was arrested, Respondent interacted with another protester, B. B also was arrested. The CCRB alleges that in the course of the arrest, Respondent placed B in a chokehold and that his breathing was restricted. Respondent denies using a chokehold

or that B's breathing was restricted, and asserts he used a permissible Department maneuver to bring B to the ground.

It is further undisputed that Respondent directed B be issued a summons for disorderly conduct under Penal Law § 240.20 (5), obstructing vehicular or pedestrian traffic. The CCRB asserts that as a matter of law, B could not have been committing disorderly conduct under this subsection because he was standing in the parking lane of the street. Respondent asserts that B still could have been obstructing vehicular traffic.

The evidence presented by the CCRB consisted of a video taken by another protester, and the CCRB phone interviews of A and B. Neither A nor B was the person that originally contacted CCRB. The parties further agreed that A and B told the CCRB that they could not come in for a formal interview until their criminal cases were concluded. It is undisputed that the complainants' criminal cases were dismissed by the time of the Department trial. They never came in for further interviews. The CCRB did not indicate any further attempts to contact them (Tr. 160-61).

A was interviewed over the phone by the CCRB on August 25, 2015. She stated that several protesters were "just marching down a road," when "all of a sudden" a police officer approached and "pushes me up against a vehicle and then onto the ground." A conceded that she was marching in the roadway and not on the sidewalk. She was arrested for "[f]ailure to move" and resisting arrest (CCRB Ex. 1, A interview transcript, pp. 1-4).

A also stated that as the officer arrested another protester, B, the officer "grabs him by the neck" and placed him in a chokehold (Ex. 1, pp. 2-3).

B also was interviewed over the phone by the CCRB on August 25, 2015. B asserted that a "lone officer" came up behind the marchers, pushed one of them against a

vehicle, and “threw her down.” The officer did this “completely unprovoked and without any announcement that . . . I’m aware of” (CCRB Ex. 2, B interview transcript, pp. 1-2, 4).

B also stated that “we were observing with the officer and making sure that . . . the woman was okay.” The officer approached B and was telling people to get back. As B moved back, the officer pushed him and B stumbled. B turned to move further away from the officer when he stumbled. The officer grabbed B and “threw me down” (Ex. 2, p. 4).

B stated that the officer “attempted” to place him in a chokehold. The investigator interjected, “[D]id he, was he able to or?” B clarified that the officer’s arm was around his throat. Another protester “shouted” because “they observed it.” The officer said “okay” and released his arm. B affirmed that his breathing was restricted. B was detained and released with a summons for disorderly conduct (Ex. 2, pp. 4-5).

THE VIDEO (Ex. 3) begins with marchers heading down the two right-most lanes of the roadway and chanting. Respondent is the only member of the service visible. Vehicles can been seen parked on the north side of the street, but not the south. Around 00:06, Respondent interacts with a male marcher, who then moves over slightly toward the south curb, where many other marchers are walking. Around 00:10, Respondent begins speaking to A. A continues walking down the street. Around 00:14, Respondent grabs A, who throws up her arms toward him in response. Respondent maintains control of A and places her against a parked vehicle on the north side. Other protesters attempt to free A and begin chanting “Shame.”

Around 00:29, Respondent brings A to the ground. Around 00:36, a protester, C, wraps her body around A. Other protesters surround Respondent, A and C. A police vehicle arrives around 00:52 and Respondent pushes C off and

away. A few seconds later, bystanders begin yelling, "What the fuck is wrong with you?" and "You don't push her like that, you asshole!"

By 1:04, A is placed in handcuffs by Respondent and two police officers, one of whom was Police Officer Brian Devita. At 1:11, several protesters surround the three officers and A, yelling while thrusting their upper bodies toward the officers and A. "Who do you protect? Who do you serve?"

At 1:24, the officers begin indicating to the crowd to step back. At 1:28, Respondent reappears in the frame and tells B, "Back up" and "Get off the street please." At 1:34, B is speaking to Respondent, pointing at him repeatedly and saying, "Who pays your salary?"

At 1:35, after three times of saying "Get off the street please," Respondent tells B, "Enough, I'm not going to tell you again, get off [*sic*] the sidewalk," while pointing to the south sidewalk. B does not comply. At 1:37, Respondent grabs B's arm. B evades Respondent's grip as Respondent throws his own arms back with a surprised facial expression. At 1:39, B begins moving away from Respondent, toward the south sidewalk, with Respondent in pursuit.

By 1:40, both B and Respondent are on the sidewalk. Respondent places his left arm on the side of B's neck, grabs B's right side with his right arm, and takes him to the ground. At 1:45, Respondent's left arm is crooked at the elbow next to the left side of B's neck. At 1:47, Respondent lifts B's head slightly using his left arm. A bystander asks,

"Why you got him in a chokehold?" Other officers arrive to assist Respondent in handcuffing B and order the crowd to back off. By 1:58, Respondent and at least one other officer have B under control. The sound of handcuffs is heard around 2:03. At 2:18, the officers stand B up and lead him away.

POLICE OFFICER BRIAN DEVITA of the 17 Precinct testified that he was notified by the desk sergeant of a disorderly group protesting in the street. Devita and his partner traveled by car to 54th Street and Third Avenue, where he observed approximately 20 to 25 protesters marching south on Third Avenue, against traffic. Devita continued east on 54th Street (Tr. 22-25, 41-42).

Devita testified that he heard a 10-85, call for assistance, from Respondent, while traveling south on Second Avenue. When Devita and his partner arrived at Respondent's location by making a right onto 50th Street, Respondent was on the ground, surrounded by 15 to 20 protesters, holding onto A, who was face down on the ground. The protesters in general had been walking in the direction of traffic on that street. The crowd was screaming and chanting. Respondent was the only member of the service there. In Devita's view, the protesters were creating a hazard for Respondent, pedestrians and motorists (Tr. 25-28, 34, 40-44, 48, 51).

Devita testified that parking was permitted on the street in question on both the north and south sides. If all the street were clear of cars, three vehicles could travel down the street next to each other. Devita observed vehicles backed up behind the protesters and they could not pass. In fact, the reason that Devita traveled against traffic to get to Respondent was that had he tried to go in the correct direction, the protesters would have been blocking the way (Tr. 48-52).

Devita cleared some space between Respondent and the protesters. Respondent informed Devita that A was under arrest, and Devita assisted in handcuffing her. Devita and his partner stayed with A while Respondent attempted to move people onto the sidewalk. As they did so, Devita observed Respondent and B, "who was partaking in a verbal altercation" with the sergeant (Tr. 26-28, 34, 36-37, 44, 47).¹

¹ Devita also testified that he did *not* see the "verbal altercation" (Tr. 37).

As Devita and his partner were moving A to the police vehicle, he observed Respondent and B engaging in a now-physical altercation about 15 to 20 feet away. B pulled away from Respondent and Respondent was trying to apprehend him. Devita then saw both of them on the ground, with Respondent trying to place B under arrest. There were several additional officers on the scene at this point, with a crowd of protesters gathering around Respondent and the suspect. Devita did not see Respondent use a chokehold or have his arm around B's neck. Nor did Devita hear any bystander say the word "chokehold" (Tr. 28-30, 37-38, 40, 45, 50).

Devita transported A to the 17 Precinct stationhouse and was the arresting officer on her case and that of B. The charges on A's case were disorderly conduct, Penal Law §§ 240.20 (5) (obstructing pedestrian or vehicular traffic) & (7) (creating "a hazardous or physically offensive condition by any act which serves no legitimate purpose"). B was charged solely through a summons with Penal Law § 240.20 (5). Respondent directed the arrest charges for both subjects (Tr. 30-32, 45, 47).

RESPONDENT testified that he was assigned to the 17 Precinct as a sergeant, generally as the patrol supervisor on the first platoon. On August 17, 2015, he performed a pre-tour overtime assignment starting around 1900 hours. Around 2000 hours, Respondent was at the station house on 51st Street between Third and Lexington Avenues when he heard radio runs concerning a disorderly group traveling south on Third Avenue in the 50s (Tr. 55-57, 91-92, 95, 124-27).

Respondent noted that about a week prior, a vehicle traveling in the right lane on Second Avenue crashed into three pedestrians at 49th Street, within the confines of the 17 Precinct. One of the pedestrians was killed. He also realized that it was getting dark out at the time of this protest and there was a lot of vehicular traffic on Third Avenue. Respondent took the prior

fatality into consideration when deciding to "assist" in addressing the protest condition (Tr. 57-60, 128; Respt. Exs. A & B, complaint report and police accident reports).

Respondent also presented as evidence several 911 call-taker summaries (Ex. C).

Starting at 1956 hours, callers reported a disorderly group marching in the middle of the street, blocking traffic and other pedestrians, yelling at onlookers, kicking cars and dumping garbage in the street.

Respondent testified that he went to Third Avenue and observed protesters walking southbound in the middle of the road. Vehicles were slamming on their brakes and swerving to avoid hitting the marchers. Respondent began instructing them to "get out of the street and get on the sidewalk." Some followed his instructions as the group turned east onto 50th Street (Tr. 59-61, 90-93, 96, 124-26).

Respondent advised the central radio dispatcher of the protesters' location. He continued to instruct them to get out of the street and onto the sidewalk because they were obstructing traffic. He was motioning with his hands and speaking in a loud, clear voice. Respondent first spoke to protesters to his right, and they appeared to comply in moving close to the sidewalk, although they did not actually get on it. Respondent testified that these protesters were marching in a safe manner. It would have been acceptable to him if all the protesters had gotten close enough to the sidewalk to march down the street in this safe fashion, notwithstanding that they would not be on the sidewalk itself and still would remain in the street (Tr. 61-62, 78-79, 97-99, 122-23, 132-34).

Respondent next addressed protesters in the center of the street that were not complying with his instructions. The closest protester to him was A. Respondent instructed her several times to get on the sidewalk because she was obstructing traffic. A shook her head and said no. Respondent grabbed A by the wrist to arrest her. She tensed up and pulled her arm and

wrist backward. Respondent placed A against a car because there were other protesters "jumping all over" him. He called a 10-85 and looked for other officers, whom he believed had acknowledged the protest condition and were responding to the scene. When he did not see anyone, he "realized [he] was in trouble" and took A to the ground (Tr. 62-66, 79-80, 92-94, 99-105, 125-26).

Once on the ground, Respondent still felt people trying to pull his body and gun belt. Another protester, C, got on top of and wrapped herself around A to try to extricate her. Once the backup officers arrived, Respondent pushed C off and placed handcuffs on A. Respondent asserted that he canvassed for C afterward without success (Tr. 65- 68, 80-82, 106-08, 118-19).

When Respondent got up and the other officers took control of A, Respondent took four steps at most and turned around when he was confronted by a second protester, B. B had both of his hands raised and was chanting at Respondent. Respondent told him,

"[G]et on the sidewalk, get on the sidewalk. I'm not going to ask you again." B was closer to the center of the road than were the persons with whom Respondent initially interacted on the video. Respondent did not know whether B was in the parking lane, but he would have been on, past, or behind the southernmost dashed line demarcating the lanes. He agreed that there was parking available on both sides of the street but was "not always in keen" with parking conditions because he generally worked midnights (Tr. 68-69, 74, 82-83, 108-10, 112, 120-23, 127, 130-31).

Initially, B complied with Respondent's instructions by backing up, but stopped. His hands still were in very close proximity to Respondent's face, significantly raising Respondent's tactical awareness. In turn, Respondent grabbed B's wrist. B slipped away, took several steps backward, and bladed his body sideways. Respondent considered this to be a fighting

stance. To take B down, Respondent used a maneuver in which he placed his right arm under the suspect's right arm and armpit, lifting up the suspect's right side. Respondent placed his left arm on the left side of the suspect's face, squeezing it. His elbow was not bent in a way that placed his arm around the suspect's neck. Respondent's maneuver allowed him complete control over the suspect's upper body. Respondent then took him to the ground. Respondent denied that his arm came into contact with the front of B's neck or that B's breathing was restricted (Tr. 69-77, 84-85, 112-15).

Respondent denied that, at 1:46 on the video, his arm was around B's neck. Respondent asserted that his arm was wrapped around B's head. Respondent's arm was lying on the ground, and B's head did not touch the pavement (Tr. 115-17).

Respondent brought B to his feet and he was taken to a police vehicle. He did not appear to be in distress or have difficulty breathing. Respondent instructed Devita on the arrest charges: obstructing traffic and resisting arrest for A, obstructing traffic only for B (Tr. 72-73, 86, 88, 122).

Specification No. 3

Respondent is charged with wrongfully using physical force against A by grabbing her and pushing her against a parked vehicle. According to the CCRB, there was no "urgency" to the situation in which A was unquestionably blocking traffic by marching in the center of East 50th Street. Notably, Respondent is not charged with arresting or summonsing A without legal authority. The CCRB claimed that Respondent "could have actually in real life exhibited patience and restraint" and waited until backup arrived (Tr. 148-49).

The Court disagrees with the argument. First, Respondent also is not charged with using improper police tactics. In fact, such a charge would be ultra vires the CCRB's mandate to begin with, see City Charter § 440 (c)(1). In other words, Respondent's decision to arrest A and

what went into that decision-making process is not at issue. Only the force he allegedly used to make the arrest is at issue.

Second, the Court does not see how the presence of additional officers would have made the use of any force more lawful. Even if Respondent had waited perhaps one minute more until Devita and his partner arrived, there is no evidence that A would not still be blocking traffic, that A would refuse to move upon Respondent's instruction, and that Respondent would not make the arrest.

Third, the Court in any event finds Respondent's use of force to be reasonable. Respondent credibly testified, supported by the video, that he instructed the crowd, including A, to stop blocking traffic and get on the sidewalk, and that she refused. It is not a wrongful use of force to grab a suspect's wrist to arrest her. Furthermore, the video demonstrates, at 00:16-00:18, that A raised her arms and held them in a way so as to resist being handcuffed. This justified Respondent placing her against the parked vehicle. The fact that A may not have been "expecting" the police to take police action against her for blocking a thoroughfare in Midtown Manhattan (Tr. 157) is irrelevant to the analysis.

As such, Respondent is found Not Guilty of Specification No. 3.

Specification No. 4

Here, Respondent is charged with wrongfully issuing a summons to B for disorderly conduct. The CCRB asserts that because B was standing in the street, but only in the parking lane, he could not have violated the charged statute, Penal Law § 240.20 (5), blocking vehicular or pedestrian traffic.

The Court disagrees. Vehicle and Traffic Law § 152 defines "traffic" as "Pedestrians, ridden or herded animals, vehicles, bicycles, and other conveyances either singly or together while using any highway for purposes of travel." There is no indication that "traffic" cannot

exist in a lane where parking may be permitted. The video shows zero parked vehicles in the area where B was standing. Respondent credibly testified that traffic was backed up the entire street behind the protest. Anyone who has driven in New York City can attest that roadway lanes not taken up by parked vehicles, even if parking occasionally is permitted there, may have to be used by moving vehicles in order for traffic to proceed.

As B was standing in an area accessible to traffic, and refused to move upon instruction from Respondent, the summons was valid. Thus, Respondent is found Not Guilty of the fourth specification.

Specification No. 5

In the fifth specification, Respondent is charged with wrongfully using force against B by "forcefully" taking him to the ground without police necessity. The Court disagrees. The video, in particular at 1:38, demonstrates that B was noncompliant and physically resisted the prior, much less extreme methods employed by Respondent. These included strongly worded directives and the placing of Respondent's hand on B to arrest him. The video shows B pulling his arm away as Respondent attempts to grab it. B then runs away from Respondent, but Respondent is able to grab him again at 1:39.

Further, when Respondent takes down B, they are on the sidewalk. There is nothing like a vehicle to place B against. He and Respondent are adjacent to a couple of bystanders watching from a stoop, and several metal guiderails (01:40-41). Respondent did not "forcefully" take down B, but rather brought him to the ground in a controlled manner more or less as demonstrated by Respondent at trial. This was the safest option available to Respondent under the circumstances. It also took place before the chokehold referenced in the specifications above.

As any use of force by Respondent in taking down B prior to the chokehold was lawful, the Court finds him Not Guilty of Specification No. 5. See Case No. 2013-10385, p. 7 (June 19, 2015) (sergeant not guilty of excessive force for tackling suspect to subway platform; this was the safest manner of arresting him after lesser attempts were met with resistance); compare with Case No. 2015-14570, p. 8 (July 18, 2017) (it was excessive force to violently fling a non-resistant suspect to the ground in the course of arresting him, rather than taking him to the ground in a controlled manner).

Specification Nos. 1 & 2

Respondent is charged with placing B in a chokehold and with restricting his breathing. Old Patrol Guide § 203-11 (p. 1, para. 5), in effect at the time of this incident, defined a chokehold as any pressure to the throat or windpipe, which "may prevent or hinder a person's breathing or reduce intake of air." This definition focuses on the conduct of the officer, not the intent. If the officer exerts pressure on the throat in the manner proscribed, that officer is subject to discipline. The length of time of the hold is not dispositive. See Case No. 2015-13121, pp. 6-7 (Sept. 20, 2016).

B stated to the CCRB investigator that Respondent "attempted" to place him in a chokehold. The investigator interjected, "[D]id he, was he able to or?" B clarified that Respondent's arm was around his throat. Respondent, however, testified at trial that his arm never was around B's neck. Respondent testified that when they went to the ground, his arm was around B's head. Respondent's elbow was bent inward, but his arm was between B's head and the ground.

The video footage is an important consideration in this case. Perhaps the most crucial moments of the video in this regard begin around 1:45. Respondent is on top of B with his left arm bent inward around his neck. The greater part of B's head is visible, indicating that

Respondent's arm was at a lower spot. At 1:46, Respondent lifts B's head and body, including his torso, with his arm, indicating that pressure might have been applied to B's throat or windpipe. Respondent's arm still is around B's neck at 1:47. It was evident from the video that this hold might have prevented or hindered B's breathing or reduced his intake of air.

While the video is essential in this case, the Court also relies upon the fact that Respondent did not testify credibly on the issue of whether his arm was around B's neck. At the very least, the video shows that Respondent's arm is around B's neck, even if pressure was not actually being applied. Respondent, however, testified that his arm was only around B's head. The video shows that this was not a credible statement.

The Court also notes that Respondent asserted that B's head was not touching the ground because Respondent's arm was around it. Respondent also asserted that his arm was on the pavement, supporting B's head, and he knew this because his elbow had cuts and scrapes on it (Tr. 116-17). There are, however, other explanations for why B's head might not have reached the pavement, most notably that Respondent's arm was around his neck. Additionally, Respondent was struggling with several suspects during the encounter and could have sustained lacerations to his elbow in other ways.

Thus, the CCRB established by a preponderance of the evidence that Respondent placed his left arm around B's throat in a chokehold as defined by the Patrol Guide. He therefore is found Guilty of Specification No. 1.

Respondent is charged separately with *actually* restricting B's breathing. B affirmed the CCRB investigator's question of whether his breathing was restricted by saying, "Yeah, yeah." Respondent denied at trial that B's breathing was restricted, and noted that he did not appear to be in any distress.

Hearsay is admissible in this forum if it is sufficiently relevant and probative. See People ex rel. Vega v. Smith, 66 N.Y.2d 130, 139 (1985); Matter of Grossman v. Kralik, 217 A.D.2d 625, 626 (2d Dept. 1995); cf. Matter of Andruszkiewicz v. Doherty, 84 A.D.3d 595 (1st Dept. 2011) (hearsay testimony of Sanitation Department investigator, who obtained statement from woman that tipped employee for accepting trade waste, was sufficiently relevant and probative to demonstrate that employee accepted the gratuity).

The video demonstrates that B had a significant bias against police officers. His hearsay statement is not credible on its own. B's affirmation, however, that the chokehold restricted his breathing was corroborated by the video itself. It is more likely than not that the moment in which Respondent's arm is lifted up against B's neck would have restricted his breathing. The Court does not find B's apparent lack of physical distress on the video in the aftermath to be dispositive. Additionally, the Court again notes that Respondent's testimony about where his arm was located was not credible. As such, the Court finds Respondent Guilty of Specification No. 2.

PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on January 9, 2012. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The CCRB recommended a penalty of the forfeiture of 30 vacation days and one-year dismissal probation, but Respondent has not been found Guilty of all of the specifications. In any event, based upon the totality of the circumstances, that recommendation is excessive.

The chokehold in this case was used against an individual who was resisting a lawful arrest. B evaded Respondent's grasp and attempted to flee being placed in custody. The

Court credits Respondent's testimony, as supported by the video, that he was attempting at the outset to engage in a lawful takedown maneuver. The chokehold lasted perhaps three seconds. None of these surrounding circumstances justify the chokehold, but they do provide important context for assessing it. The Court also notes that Respondent has been with the Department close to 15 years and has no prior disciplinary history. He has excellent recommendations and several commendations.

As such, the Court recommends that Respondent forfeit 10 vacation days as a penalty.

See Case No. 2015-14914, pp. 13-14 (Oct. 25, 2017) (10 days for officer with 10 years of service and no disciplinary history, who used chokehold against subject "who was an active participant in a decidedly chaotic situation").

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials

APPROVED

JUL 06 2018

JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
SERGEANT JAMES SLAVIN
TAX REGISTRY NO. 933362
DISCIPLINARY CASE NO. 2016-15000

Respondent was appointed to the Department on July 1, 2003. For his last three annual performance evaluations, he received two overall ratings of 4.5 "Extremely Competent/Highly Competent" in 2017 and 2016, and one 5.0 "Extremely Competent" in 2015. Respondent has been awarded 43 medals for Excellent Police Duty, and 14 medals for Meritorious Police Duty.

[REDACTED]

[REDACTED]

Respondent has no disciplinary record.

For your consideration.

A handwritten signature in black ink, appearing to read "David S. Weisel".

David S. Weisel
Assistant Deputy Commissioner Trials